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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOHN SCANNELL,

9 Plaintiff,

v.

10 WASHINGTON STATE BAR
11 ASSOCIATION, et al.,

12 Defendants.

CASE NO. C18-5654 BHS

ORDER GRANTING
DEFENDANTS' MOTIONS TO
DISMISS, PLAINTIFF'S MOTION
FOR AN EXTENSION, AND
PLAINTIFF'S MOTION FOR
LEAVE TO FILE AN AMENDED
COMPLAINT; TERMINATING
SOME DEFENDANTS; AND
GRANTING PLAINTIFF LEAVE
TO AMEND

14 This matter comes before the Court on Defendant Karen Unger's ("Unger")
15 motion to dismiss, Dkt. 16; Defendants State of Washington ("State"), Mary Fairhurst,
16 Steven Gonzalez, Charles Johnson, Chris Lanese, Barbara Madsen, Sheryl Gordon
17 McCloud, Susan Owen, Debra Stephens, Charles Wiggins, Kim Wyman ("Wyman"),
18 and Mary Yu's (collectively "State Defendants") motion to dismiss, Dkt. 19; and Plaintiff
19 John Scannell's ("Scannell") motion for extension of time to file responses, Dkt. 28;
20 Defendant Washington State Bar Association's ("WSBA") motion to dismiss, Dkt. 36;
21 and Scannell's motion for permission to file an amended complaint, Dkt. 38. The Court
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1 has considered the pleadings filed in support of and in opposition to the motions and the
2 remainder of the file and hereby rules as follows:

3 **I. PROCEDURAL AND FACTUAL BACKGROUND**

4 On September 9, 2010, the Washington Supreme Court disbarred Scannell from
5 the practice of law in Washington. *In re Disciplinary Proceeding Against Scannell*, 169
6 Wn.2d 723 (2010). On April 23, 2012, Scannell filed a complaint in this Court
7 requesting declaratory and injunctive relief and damages resulting from alleged violations
8 of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), the Sherman Anti-
9 Trust Act (“Sherman Act”), and his civil rights under 42 U.S.C. § 1983. *Scannell v.*
10 *Washington State Bar Ass’n*, Cause No. C12-0683-SJO, 2014 WL 2094502, at *2 (W.D.
11 Wash. May 20, 2014) (“*Scannell I*”). On May 20, 2014, the Court dismissed his claims
12 with prejudice and without leave to amend. *Id.* at *11. On December 3, 2016, the Ninth
13 Circuit affirmed in a memorandum opinion submitted on the briefs without oral
14 argument. *Scannell v. Washington State Bar Ass’n*, 671 Fed. Appx. 529, 531 (9th Cir.
15 2016).

16 On May 18, 2018, Scannell submitted an application to run for a position on the
17 Washington Supreme Court. Dkt. 1 at 9, ¶ 2.10. On May 21, 2018, Unger filed a petition
18 in Thurston County Superior Court for the State of Washington challenging Scannell’s
19 election filing. Dkt. 15-1 at 14. Unger alleged that Scannell’s application violated the
20 Washington Constitution, which provides that “[n]o person shall be eligible to the office
21 of judge of the supreme court, or judge of a superior court, unless he shall have been
22 admitted to practice in the courts of record of this state, or of the Territory of

1 Washington.” Wash. Const. art. IV, § 17. The Washington Supreme Court has
2 interpreted this clause as follows:

3 We think it is clear that the Constitution meant to say that no person is
4 eligible to the office of judge of the superior court unless he shall have been
5 admitted to practice in the courts of record in this state, which means that
6 he not only shall have been, but that he is, at the time he becomes a
7 candidate or is required to qualify as such judge, entitled to practice in the
8 courts of this state.

9 *State v. Monfort*, 93 Wn. 4, 7 (1916).

10 On June 1, 2018, Thurston County Superior Court Judge Chris Lanese granted the
11 petition and ordered Washington Secretary of State Wyman to exclude Scannell’s name
12 from the primary and general election ballots. Dkt. 15-7 at 1–2. Scannell alleges that
13 this order is void because it violates the relevant statute that requires all challenges
14 “shall be heard and finally disposed of by the court not later than five days after the filing
15 thereof.” RCW § 29A.68.011. Unger filed her challenge on May 21 and Judge Lanese
16 issued his order more than five days later on June 1. Judge Lanese’s order is generally
17 not appealable. *Parker v. Wyman*, 176 Wn.2d 212, 216 (2012) (phrase “finally disposed
18 of by the court” means “that a decision on a ballot challenge is not appealable.”).

19 On August 13, 2018, Scannell filed a 180-page complaint against Unger, the State
20 Defendants, and the WSBA asserting a claim for violation of his civil rights under § 1983
21 and a violation of the Sherman Act. Dkt. 1. Although he doesn’t explicitly set forth a
22 RICO claim, he refers to RICO on numerous occasions.

On September 6, 2018, Scannell filed a motion to reassign the matter to an out-of-
district judge. Dkt. 7. On September 13, 2018, the undersigned declined to recuse and

1 referred the motion to the Honorable Ricardo Martinez, Chief United States District
2 Judge for the Western District of Washington. Dkt. 12.

3 On September 14, 2018, Unger moved to dismiss. Dkt. 19. On September 20,
4 2018, the State Defendants moved to dismiss. Dkt. 19. On October 9, 2018, Scannell
5 filed a motion for an extension of time to file responses. Dkt. 28. On October 10, 2018,
6 Scannell responded to both motions. Dkts. 29, 30. On October 12, 2018, the State
7 Defendants replied. Dkt. 31. On October 17, 2018, Scannell filed a surreply. Dkt. 35.

8 On October 9, 2018, Chief Judge Martinez affirmed the undersigned's decision
9 not to recuse. Dkt. 27.

10 On October 18, 2018, WSBA filed a motion to dismiss. Dkt. 36. On November 5,
11 2018, Scannell responded. Dkt. 42.

12 On October 22, 2018, Scannell filed an amended complaint and a motion for
13 permission to file an amended complaint. Dkt. 38. On November 1, 2018, WSBA
14 responded. Dkt. 39. On November 8, 2018, Scannell replied. Dkt. 44.

15 **II. DISCUSSION**

16 **A. Motion to Amend**

17 On October 22, 2018, Scannell filed an amended complaint, adding some
18 allegations related to filings in this proceeding, asserting the same claims, and adding
19 Chief Judge Martinez and the undersigned as defendants. Dkt. 37. The Court grants the
20 motion because it appears that Scannell may be allowed to file an amended claim as a
21 matter of right and, at the very least, the Court should freely grant leave to amend. Fed.
22 R. Civ. P. 15(a).

1 Regarding the new defendants, Scannell added Chief Judge Martinez and the
2 undersigned in an effort to circumvent the denial of his motion to reassign the instant
3 matter to an out-of-district judge. “Where a claim against the assigned judge is so wholly
4 frivolous that there is no jurisdiction, the assigned judge should be able to decline to
5 recuse and proceed with dismissing the [claims].” *Snegirev v. Sedwick*, 407 F.Supp.2d
6 1093, 1095 (D. Alaska 2006). Scannell’s claims against Chief Judge Martinez and the
7 undersigned are so frivolous that the Court will dismiss them for lack of subject matter
8 jurisdiction and proceed to consider the motions to dismiss.

9 If claims are wholly frivolous, district courts lack subject matter jurisdiction to
10 consider them. *See Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 363–
11 64 (2d Cir. 2000) (finding that district courts may dismiss frivolous complaints *sua*
12 *sponte* even when a plaintiff has paid required filing fee). Judges enjoy absolute
13 immunity from *Bivens* suits for their rulings, even if those rulings are clearly erroneous
14 and maliciously motivated. *See, e.g., Mireles v. Waco*, 502 U.S. 9, 11 (1991); *Stump v.*
15 *Sparkman*, 435 U.S. 349, 355–57 (1978).

16 In this case, Scannell admits that he added Chief Judge Martinez and the
17 undersigned in order to bring a motion to disqualify the undersigned. The Court finds
18 that such frivolousness is subject to sua sponte dismissal and is most likely sanctionable
19 conduct in that Scannell only aims to harass and create delay in adjudicating matters of
20 substance. Therefore, the Court dismisses with prejudice and without leave to amend all
21 of Scannell’s claims against the United States District Court for the Western District of
22 Washington, Chief Judge Martinez, and the undersigned.

1 **B. Barred Claims**

2 In this case, the basis for Scannell's claims are two underlying state court
3 judgments that Scannell alleges are void. The first judgment is the Washington Supreme
4 Court's opinion disbaring him from the practice of law. The Court concludes that
5 Scannell's claims based on this judgment are barred by res judicata. The second
6 judgment is Judge Lanese's order granting Unger's petition to remove Scannell's name
7 from the primary and general election ballots. The Court concludes that Scannell's
8 claims based on this judgment are barred by the *Rooker-Feldmen* doctrine. Accordingly,
9 the Court grants the State Defendants and the WSBA's motions to dismiss and dismisses
10 the majority of Scannell's claims with prejudice and without leave to amend.

11 First, res judicata applies "whenever there is (1) an identity of claims, (2) a final
12 judgment on the merits, and (3) privity between the parties." *Tahoe-Sierra Preservation*
13 *Council, Inc. v. Tahoe Regional Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003).
14 "The doctrine of res judicata is meant to protect parties against being harassed by
15 repetitive actions." *Id.* (internal citations omitted). The prior claims and present claims
16 need not be identical; "identity of claims exists when two suits arise from the same
17 transactional nucleus of facts." *Id.* (internal quotations omitted).

18 In this case, Scannell asserts identical claims under § 1983, RICO, and the
19 Sherman Act that were dismissed in his prior action. There is an identity of claims
20 because his current claims arise from the same transactional nucleus of facts as his
21 previous claims challenging membership in the WSBA as a prerequisite to practice law in
22 Washington. *See Scannell*, 671 Fed. Appx. at 530 ("The district court lacks subject

1 matter jurisdiction to decide Scannell’s claims for relief under § 1983, RICO,” and the
2 “state action doctrine bars Scannell’s antitrust claims”); Dkt. 37 at 178–179 (Scannell
3 seeks a permanent injunction against defendants preventing them “from interfering with
4 Scannell’s practice of law or attempts to obtain his law license by requiring membership .
5 . . to the WSBA”). There was a final judgment on the merits. *Scannell*, 671 Fed. Appx.
6 at 530. There is privity of parties because Scannell alleges that the WSBA and that the
7 other defendants control the WSBA. Dkt. 39 at 178–79; *Tahoe-Sierra Pres. Council*, 322
8 F.3d at 1081 (“Even when the parties are not identical, privity may exist if there is
9 substantial identity between parties, that is, when there is sufficient commonality of
10 interest.” (internal quotations omitted)). Therefore, to the extent that Scannell is asserting
11 claims related to his disbarment, the claims are barred by res judicata.

12 Second, Scannell asserts claims related to Judge Lanese’s order removing his
13 name from the Washington state ballots because Scannell had been disbarred or, more
14 appropriately, was not licensed to practice law in Washington. The *Rooker–Feldman*
15 doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, (1923), and
16 *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). “Under
17 *Rooker–Feldman*, a federal district court does not have subject matter jurisdiction to hear
18 a direct appeal from the final judgment of a state court.” *Noel v. Hall*, 341 F.3d 1148,
19 1154 (9th Cir. 2003). “[W]hen a losing plaintiff in state court brings a suit in federal
20 district court asserting as legal wrongs the allegedly erroneous legal rulings of the state
21 court and seeks to vacate or set aside the judgment of that court, the federal suit is a
22 forbidden de facto appeal.” *Id.* at 1156. Moreover, “[o]nce a federal plaintiff seeks to

1 bring a forbidden de facto appeal, as in *Feldman*, that federal plaintiff may not seek to
2 litigate an issue that is ‘inextricably intertwined’ with the state court judicial decision
3 from which the forbidden de facto appeal is brought.” *Id.* at 1158.

4 Scannell’s de facto appeal of Judge Lanese’s order is obvious from the face of his
5 complaint. Scannell seeks “injunctive relief against the defendants from enforcing Judge
6 Lanese’s void order.” Dkt. 37 at 179–80. To the extent Scannell argues that Judge
7 Lanese’s order is void, the Court finds that any argument seeking to void the order is a de
8 facto appeal. Although an appeal of Judge Lanese’s order is generally forbidden, the
9 Washington Supreme Court has invoked its inherent power to review similar election
10 disputes. *Parker*, 176 Wn.2d at 217 (accepting review of superior court order denying
11 petition to remove individual from ballots). Thus, the proper avenue of appeal is through
12 the Washington courts and then to the United States Supreme Court. *Noel*, 341 F.3d at
13 1155 (“A party disappointed by a decision of the highest state court in which a decision
14 may be had may seek reversal of that decision by appealing to the United States Supreme
15 Court.”) Such an appeal would have included the argument that Judge Lanese failed to
16 timely rule on Unger’s petition within the time limit prescribed by the election statute.
17 Accordingly, the Court grants the motions to dismiss on Scannell’s claims seeking to set
18 aside Judge Lanese’s order.

19 To the extent that Scannell seeks a declaration that an official or entity may not
20 enforce Judge Lanese’s void order, the Court finds that these claims are inextricably
21 intertwined with his de facto appeal. Scannell must first establish that Judge Lanese’s
22 order is void in order to argue that it should not be enforced. Therefore, the Court grants

1 the motions to dismiss on Scannell's claims regarding enforcement of Judge Lanese's
2 order.

3 **C. Other Claims and Appropriate Relief Against WSBA and State Defendants**

4 Upon review of the complaint and Scannell's prior litigation history, it is a rational
5 inference that Scannell's complaint is intentionally verbose, confusing, and drafted in a
6 such a way as to only increase the costs of litigation. Nonetheless, the Ninth Circuit has
7 found an abuse of discretion when this Court failed to thoroughly appease a similar
8 litigant referenced in Scannell's complaint, William Scheidler. *See Scheidler v. Avery*,
9 599 Fed. Appx. 688 (9th Cir. 2015) ("the district court abused its discretion in dismissing
10 the first amended complaint without leave to amend."). "A district court should not
11 dismiss a pro se complaint unless it is absolutely clear that the deficiencies of the
12 complaint could not be cured by amendment." *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th
13 Cir. 2012) (citation and internal quotation marks omitted). Thus, the Court will assess
14 what claims, if any, remain and whether leave to amend should be granted.

15 To the extent any claim remains against the Washington Supreme Court Justices
16 or Judge Lanese, the Court dismisses any claim with prejudice because they are entitled
17 to judicial immunity. *Stump v. Sparkman*, 435 U.S. 349, 364 (1978) (state circuit judge is
18 immune from suit for all actions within his or her jurisdiction). No amendment will
19 overcome this immunity. *See, e.g., Scannell I*, Dkt. 68 ("The Court also finds based on
20 the facts alleged that Plaintiff cannot possibly amend his Complaint in a way that would
21 create legally cognizable claims against Judicial Defendants. Plaintiff's claims against
22 Judicial Defendants are therefore DISMISSED WITHOUT LEAVE TO AMEND.").

1 Therefore, Scannell's claims against these defendants are dismissed with prejudice and
2 without leave to amend.

3 Regarding Wyman, the Court finds that it is not absolutely clear what other claims
4 Scannell asserted against her. Thus, the claims may be dismissed for failure to state a
5 claim. Fed. R. Civ. P. 12(b)(6). Moreover, it is not absolutely clear whether these claims
6 could be cured with any amendment. Therefore, the Court grants Wyman's motion,
7 dismisses Scannell's claims against Wyman without prejudice, and grants Scannell leave
8 to amend his claims against Wyman.¹

9 Regarding the State, the Court finds that it is not absolutely clear what other
10 claims Scannell asserted against it. For example, Scannell could be presenting a facial
11 challenge to RCW § 29A.68.011. It is clear, however, that such claims should be
12 dismissed for failure to state a claim. Fed. R. Civ. P. 12(b)(6). It is not absolutely clear
13 whether these claims could be cured with any amendment. Therefore, the Court grants
14 the State's motion, dismisses Scannell's claims against the State without prejudice, and
15 grants Scannell leave to amend his claims against State.

16 Regarding the WSBA, Scannell asserts at least one clear claim even though others
17 may be unclear. Scannell asserts that the requirement of membership dues as a
18 prerequisite to practicing law violates his freedom of association. Dkt. 178–79. While it
19 seems that Scannell lacks standing to bring this claim because he is not eligible to incur
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21 ¹ The Court recognizes that Wyman also moved to dismiss with prejudice on the basis of
22 Eleventh Amendment immunity and laches, but the confusing nature of Scannell's claims
prevents the Court from considering these doctrines.

1 such dues as a disbarred lawyer, WSBA did move to dismiss based on standing.
2 Regardless, the Court finds that even this claim fails to assert sufficient allegations to
3 overcome the motion to dismiss. Fed. R. Civ. P. 12(b)(6). Therefore, the Court grants
4 WSBA's motion, dismisses Scannell's claims against the WSBA without prejudice, and
5 grants Scannell leave to amend his claims against WSBA.

6 Finally, in some cases the Court must micromanage litigants that give the
7 appearance of intending to unnecessarily increase the costs of litigation. Scannell's 180-
8 page complaint gives such an appearance. Thus, the Court must put limits on any
9 amended complaint, which are as follows:

- 10 1. Scannell may only name Wyman, the State, and the WSBA as defendants;
- 11 2. Scannell may not include claims that have been previously litigated or that
12 have been dismissed with prejudice; and
- 13 3. The amended complaint shall be no longer than twenty-four (24) pages,
14 shall comply with the formatting requirement in Local Rules W.D. Wash.
15 LCR 10, and shall not include any footnotes.

16 Failure to comply with these requirements, without seeking relief or showing good cause
17 for noncompliance, may result in the imposition of sanctions up to and including
18 dismissal. Moreover, if the Court imposes monetary sanctions, the Court may require
19 payment of the sanctions before proceeding on the merits.

20 **D. Unger's Motion**

21 In this case, Unger moves to dismiss arguing that nowhere "in the Complaint does
22 the Plaintiff provide any notice as to the basis for the claim filed against her." Dkt. 16 at

1 3. Such an argument places the burden on Scannell to specifically identify the allegations
2 in the complaint that meet the requirements of “a short and plain statement of the claim
3 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Scannell fails to do
4 this, and instead responds that “he opposes [Unger’s] dismissal at this time” and launches
5 into arguments relating to immunities and the actions of other defendants. Dkt. 30. None
6 of these arguments overcome his failure to identify the factual allegations that support his
7 claims or even what claims he asserts against Unger. Therefore, the Court grants Unger’s
8 motion to dismiss.

9 Regarding leave to amend, it is unclear whether any amendment could cure the
10 deficiencies in the complaint. From a general perspective, it is unfortunate that Scannell
11 included Unger in this complaint because, purely related to this matter, she appears to be
12 a registered voter exercising her rights under state law. Now, she must expend her
13 resources defending against claims that cannot even be articulated. Regardless, the Court
14 must dismiss Scannell’s claims without prejudice and with leave to amend. *Mesa*, 698
15 F.3d at 1212. Scannell may include Unger in any amended complaint. The Court,
16 however, informs Scannell that frivolous claims against Unger **will** result in sanctions
17 because voters should not be subjected to vexatious litigation simply for challenging the
18 accuracy of the State’s ballots.

19 **III. ORDER**

20 Therefore, it is hereby **ORDERED** that Unger’s motion to dismiss, Dkt. 16, the
21 State Defendants’ motion to dismiss, Dkt. 19, Scannell’s motion for extension of time to
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1 file responses, Dkt. 28, WSBA's motion to dismiss, Dkt. 36, and Scannell's motion for
2 permission to file an amended complaint, Dkt. 38, are **GRANTED**.

3 Scannell's claims against Chief Judge Martinez, the undersigned, the United States
4 District Court for the Western District of Washington, Mary Fairhurst, Steven Gonzalez,
5 Charles Johnson, Chris Lanese, Barbara Madsen, Sheryl Gordon McCloud, Susan Owen,
6 Debra Stephens, Charles Wiggins, and Mary Yu are **DISMISSED with prejudice** and
7 the Clerk shall terminate these defendants.

8 Scannell's claims against the State, Wyman, and Unger are **DISMISSED without**
9 **prejudice** and with leave to amend. Scannell may filed an amended complaint as stated
10 herein no later than January 31, 2019.

11 Dated this 18th day of January, 2019.

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14 BENJAMIN H. SETTLE
15 United States District Judge
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